

**FIGURE 9-2. Memorandum Regarding Release of ATOS Documents.**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Memorandum

Subj: ACTION: Protecting ATOS under the Freedom Of Information Act Date: JUN 18 1998

From: Manager, AGC-110

To: Dave Hanley and Bob Carlisle  
ATOS Workgroup Co-leaders

You requested our opinion concerning the protection of certain air carrier specific surveillance planning information from public release. You specifically requested our views on the protection of completed Air Carrier System Safety Analysis Tool (SSAT), the completed Air Carrier Assessment Tool (ACAT) and the completed Comprehensive Surveillance Work Pan (CSWP) of the Air Transportation Oversight System (ATOS). A member of my Branch met with your workgroup to discuss these issues and you provided us with a copy of the Improved Surveillance Planning Process Final Report.

Your basic concern was that the disclosure of the completed SSAT, ACAT or CSWP would allow carriers to anticipate and plan for agency surveillance, as opposed to consistently complying with the Federal Aviation Regulations, and thereby, undercut your ability to plan the surveillance of these carriers.

After reviewing all the information provided, it is our opinion that there is an argument to protect those particular elements pursuant to exemption 2 of the FOIA. 5 U.S.C. § 552(b)(2).<sup>1</sup> Exemption 2 protects predominately internal information where disclosure would significantly risk circumvention of a statute or agency regulation. The agency would need to show that release of the information would render the information “operationally useless” or compromise the utility of the program. In explaining how these elements would be at risk, you stated that if an air carrier knows its rating or score it will know whether they will be inspected annually or more frequently and what areas they could neglect or strengthen based on this information.<sup>2</sup>

---

<sup>1</sup> We note that there is an argument for protection under the FOIA. We cannot guarantee that a court would agree with our interpretation if subject to legal challenge.

<sup>2</sup> It is our understanding that ATOS differs from the Safety Performance Analysis System (SPAS) in this respect. It was never adequately explained to us from a factual/operational standpoint how release of specific SPAS information would risk circumvention of a statute or agency regulation.

There is also an argument that some of the information contained in these elements may also fall under exemption 5 protection. 5 U.S.C. § 552(b)(5). Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available to a party...in litigation with the agency.” One recognized privilege under this exemption is the deliberative process privilege, which protects information that is both predecisional and deliberative in nature. However, all factual information must be released since that is not considered to be opinion or recommendation. You would need to review the elements and determine on a case-by-case basis whether certain information fell within exemption 5.

As we discussed, the best way to ensure protection of this information is to continue exploring the possibility of obtaining a legislative exemption for ATOS or certain aspects of ATOS.

/s/

LeAnne M. Faulkner